

FILED

MAR 02 2004

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY DEPUTY CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RAMIRO REYES, DOLORES REYES,
PAUL REYES, DESIREE REYES,

Plaintiffs,

MISC S-04-0059 FCD PAN PS

v.

ORDER

COUNTY OF SAN JOAQUIN; DARIO
MORENGO; STEVE GUTIERREZ;
VICTOR MOW; JACK SIGLOCK;
LEROY ORNELLAS; MANUEL LOPEZ;
TERRANCE DERMODY; SHERYL
SPARKS; EDWARD ALLUM; JOSEPH
CHELLI; LINDA VALADEZ; TAMMIE
GILES; DIANE TAYLOR; ALICIA
BAYLOR; ROBERT WINKLER; WENDY
MOORE; MARCELL SMITH; LINDA
TURNER; M. SUMURAGA; TAYMOUR
E. MALAK, M.D.; HILARY SILVER,
M.D.,

CIV.S- 04-0428 FCD PAN -PS

Defendants.

—oOo—

On February 19, 2004, plaintiff Ramiro Reyes filed an
application to proceed in forma pauperis pursuant to 28 U.S.C.

1 § 1915. The remaining plaintiffs, Dolores, Paul, and Desiree
2 Reyes, filed no such applications, nor did they sign the
3 complaint lodged with Ramiro Reyes' application as required by
4 Federal Rule of Civil Procedure 11(a).

5 Plaintiff's affidavit demonstrates that because of poverty
6 he cannot pay or give security for court costs and still be able
7 to provide himself with the necessities of life. See Adkins v.
8 E.I. Dupont de Nemours & Co., 335 U.S. 331, 339 (1948).

9 Accordingly, plaintiff's application is granted.

10 The clerk of the court is directed to open a civil file as
11 to plaintiff Ramiro Reyes. However, the clerk shall not file
12 plaintiff's lodged complaint.

13 As the remaining plaintiffs neither filed applications to
14 proceed in forma pauperis nor signed the lodged complaint, they
15 shall not be allowed to proceed in this action. However, the
16 remaining plaintiffs are granted leave to submit their own
17 applications and sign an amended complaint within 20 days of
18 service of this order.

19 Because it appears the remaining plaintiffs may be unable to
20 competently make an affidavit due to incapacity, plaintiff Ramiro
21 Reyes is granted 20 days from service of this order to show he is
22 either their guardian or apply to become their guardian ad litem.
23 See Fed.R.Civ.P. 17(c). If plaintiff is determined to be the
24 guardian for the remaining plaintiffs, he may then submit in
25 forma pauperis applications on their behalf at that time.

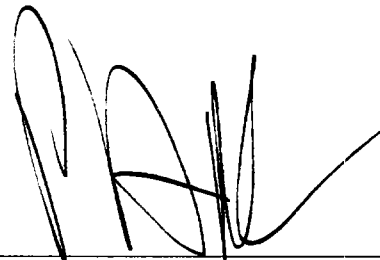
26 Regardless, plaintiff must file an appropriately signed

1 amended complaint within 20 days of service of this order. See
2 Fed.R.Civ.P. 11.

3 Upon the timely filing of a proper amended complaint,
4 plaintiff shall then provide the United States Marshal with
5 complete, current service instructions, summonses, and sufficient
6 copies of the complaint pursuant to Federal Rule of Civil
7 Procedure 4(c) so the Marshal may effect service within the time
8 required by Federal Rule of Civil Procedure 4(m). The Marshal
9 shall then serve process upon defendant pursuant to plaintiff's
10 instructions without payment of fees or expenses therefor. See
11 28 U.S.C. § 1915(d).

12 So ordered.

13 Dated: February 21, 2004.

A handwritten signature in black ink, appearing to read 'Peter A. Nowinski', is written over a horizontal line.

Peter A. Nowinski
Magistrate Judge

United States District Court
for the
Eastern District of California
March 2, 2004

* * CERTIFICATE OF SERVICE * *

2:04-mc-00059

Reyes

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v.

Silver

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on March 2, 2004, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

Ramiro Reyes
1046 West Oak Street
Stockton, CA 95203

TM/PAN

Jack L. Wagner, Clerk

BY: 
Deputy Clerk